

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSE ORRACA,

Plaintiff,

vs

9:04-CV-1183

T. McCREERY; M. BERTONE; MR. ANDREWS;
T. NASAVERIA; MR. WRIGHT; MR. MALY; and
MR. MAYBERRY,

Defendants.

APPEARANCES:

JOSE ORRACA
93-A-9300
Plaintiff, Pro Se
Southport Correctional Facility
Box 2000
Pine City, NY 14871

HON. ELIOT SPITZER
Attorney General of the
State of New York
Attorney for Defendants
Department of Law
The Capitol
Albany, New York 12224

DAVID N. HURD
United States District Judge

OF COUNSEL:

STEPHEN M. KERWIN, ESQ.
Asst. Attorney General

ORDER

Plaintiff, Jose Orraca, brought this civil rights action pursuant to 42 U.S.C. § 1983. In a Report Recommendation dated February 14, 2006, the Honorable David E. Peebles, United States Magistrate Judge, recommended that defendants' motion be granted, in part, and plaintiff's claims against them in their official capacities for damages be dismissed, based upon the Eleventh Amendment; that plaintiff's claims against defendant

Maly be dismissed, with leave to replead, based upon the lack of his personal involvement in the deprivations alleged; and that plaintiff's claim for compensatory damages for mental anguish and emotional distress be dismissed; but that defendants' motion be denied in all other respects. (Docket No. 33). The defendants have filed timely objections to the recommendations of the Magistrate Judge. (Docket No. 34). The plaintiff filed a response. (Docket No. "35").

Based upon a de novo determination of the portions of the Report-Recommendation to which the parties have objected, the Report-Recommendation is accepted and adopted in whole. See 28 U.S.C. 636(b)(1).

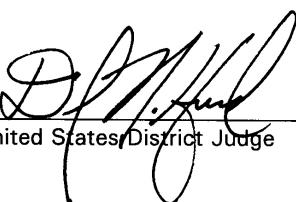
Accordingly, it is

ORDERED that

1. Defendants' motion to dismiss is GRANTED in part and DENIED in part;
2. Plaintiff's claims for damages against defendants in their official capacities is DISMISSED, based upon the Eleventh Amendment;
3. Plaintiff's claims against defendant Mr. Maly are DISMISSED;
4. Plaintiff's claim for compensatory damages for mental anguish and emotional distress is DISMISSED;
5. Defendants' motion is DENIED in all other respects; and
6. The defendants shall file and serve an answer to the remaining allegations in the complaint on or before May 10, 2006.

IT IS SO ORDERED.

Dated: April 25, 2006
Utica, New York.



United States District Judge

